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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,790	07/18/2003	Gregory K. Jones	2098-117	3508
24256	7590	12/23/2005	EXAMINER	
DINSMORE & SHOHL, LLP 1900 CHEMED CENTER 255 EAST FIFTH STREET CINCINNATI, OH 45202			RUDDOCK, ULA CORINNA	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 12/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/622,790

Applicant(s)

JONES, GREGORY K.

Examiner

Ula C. Ruddock

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 11 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 19-25, 28 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18, 26 and 27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The Examiner has carefully considered Applicant's response filed October 11, 2005. All rejections have been maintained.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restrictions

3. Applicant's election with traverse of Group I in the reply filed on October 11, 2005, is acknowledged. The traversal is on the ground(s) that the method claims depend, directly or indirectly, on claim 1. This is not found persuasive because of the reasons set forth in the previous rejection mailed April 6, 2005. The method claims require a separate search in a different classification area and the inventions are clearly distinct.

The requirement is still deemed proper and is therefore made FINAL.

4. Newly submitted claims 28 and 29 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: these claims are drawn to method claims.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 28 and 29 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

5. Claims 1, 2, 5-10, 12-16, and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Gardner et al. (US 2002/0071944). Gardner et al. disclose a breathable composite material useful housewrap [0004 & 0032]. The film and nonwoven fabric layers comprise polyolefin resin compositions, such as high density polyethylene and polypropylene [0020]. Additives are used in the film-forming resins and a preferred additive is calcium carbonate [0021]. The nonwoven fabrics can be spunbonded and can comprise polypropylene filaments [0029 & 0030]. The basis weight of the fabrics can be 15 to 140 g/m² (or .44 to 4.13 oz/yd² [0032]. The film-forming resin composition includes high density polyethylene [0033]. Regarding claims 11 and 12, multilayered configurations of the nonwoven fabric and breathable film layers, optionally with one or more layers of similar or dissimilar materials, are contemplated. A lightweight laminate having an inner breathable film layer laminated to outer surface layers of continuous filament nonwoven web, such as a polypropylene spunbonded web, provides a composite having a combination of breathability, liquid barrier properties, strength, light weight, and low cost [0025]. As seen in Example 7, the composite has moisture vapor transmission rates in the range claimed by applicant [0074].

Rejection is maintained.

Claim Rejections - 35 USC § 103

6. Claims 3, 4, 17, and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardner et al. (US 2002/0071944), as shown above in view of Carroll et al. (US 2004/0023585) or Sheth (US 4,929,303). Gardner et al. disclose the claimed invention except for the teaching that

the nonwoven fabric is a polyethylene cross-laminated open mesh having a basis weight of greater than about 0.7 oz/yd².

Carroll et al. (US 2004/0023585) disclose a vapor permeable, liquid impermeable composite used in housewrap [0002]. The composite requires polyethylene film-forming resin [0038] and calcium carbonate filler [0039]. The composite further comprises a nonwoven fabric layer that has a suitably open mesh and comprises polyethylene [0043]. Furthermore, the scrim can preferably comprises a scrim available under the tradename CLAF® [0065], which is a specific type of fabric disclosed in Applicant's own specification. Sheth (US 4,929,303) disclose composite breathable housewrap films comprising a breathable polyolefin film heat laminate to a nonwoven HDPE fabric (abstract). The composite also requires a calcium carbonate filler (col 3, ln 27-55). Preferred fabrics include the CLAF nonwoven HDPE fabrics. As seen in Table II, the basis weight of the CLAF fabric is greater than 0.7 oz/yd². It would have been obvious to have used either Sheth's or Carroll's polyethylene nonwoven open mesh as the fabric layer in Gardner's composite, motivated by the desire to create a housewrap with exceptional strength and durability.

Carroll et al. also disclose that the fabric may be woven of any suitable material comprising polyethylene or polypropylene [0043]. It would have been obvious to have used Carroll's woven fabric as the fabric layer of Gardner et al., motivated by the desire to create a laminate having increased dimensional stability.

Rejection is maintained.

Response to Arguments

7. Applicant's arguments filed October 11, 2005, have been fully considered but they are not persuasive for the reasons set forth. Applicant argues that Gardner et al. do not anticipated the claims. This argument is not persuasive because, as set forth above, Gardner et al. disclose a breathable composite material useful housewrap [0004 & 0032] comprising a film and nonwoven fabric layers that comprise polyolefin resin compositions, such as high density polyethylene and polypropylene [0020]. These components are the same materials claimed by Applicant to be low elongation and crystalline. It is not seen how the same components would have different properties than the ones claimed by Applicant. Clarification is suggested. Applicant also argues that Gardner et al. fail to specifically disclose a low elongation material, i.e. having an elongation of less than about 30% in at least one direction. This argument is not commensurate in scope with the claims because the claims, as currently written, do not require that the material have an elongation of less than about 30% in at least one direction. Applicant also argues that there is no specific teaching or suggestion by Gardner et al. having a crystalline polymer composition, wherein greater than 50% of the polymer components are in crystalline form. It is the Examiner's position that "greater than 50%" is also equal to 100% and that the polymer of Gardner et al. has 100% crystallinity. Therefore, the rejections are maintained.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C. Ruddock whose telephone number is 571-272-1481. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

UCR

Ula Ruddock
Ula C. Ruddock
Primary Examiner
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